

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/745,363
Applicant: Kostrzewski *et al.*
Filed: December 21, 2000
Title: Method of Isomorphic Singular Manifold Projection
Still/Video Imagery Compression

Group Art Unit: 2621
Confirmation No.: 2371

Docket No.: 16LP-134177
Examiner: Sherali, Ishrat I

**DECLARATION OF GORDON DREW IN SUPPORT
OF PETITION FOR REVIVAL OF ABANDONED
APPLICATION UNDER 37 C.F.R. § 1.137**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Gordon Drew, declare as follows:

1. I am a resident of Torrance, CA and a citizen of the United States of America.

2. I am the Chief Financial Officer for the Physical Optics Corporation, which is the owner of the entire right, title, and interest in U.S. Patent Application No. 09/745,363, filed on December 21, 2000 and entitled "Method of Isomorphic Singular Manifold Projection Still/Video Imagery Compression."

3. I am responsible for patent matters at the Physical Optics Corporation.

4. The entire delay in appropriately replying to the September 11, 2002 Office Action was unavoidable and unintentional.

5. The Physical Optics Corporation takes reasonable steps to ensure timely response to actions. To this end, the Physical Optics Corporation relies on outside counsel for all matters relating to docketing, prosecution and maintenance of its patents and patent applications worldwide. The Physical Optics Corporation receives and relies on regular status reports from outside counsel detailing statuses, actions due, fees due and deadlines for all worldwide patents and applications.

6. At the time this patent application went abandoned for failure to timely file a proper reply, Leonard Tachner at The Law Offices of Leonard Tachner was outside counsel for Physical Optics Corporation, and was responsible for the items outlined in paragraph 5, above.

7. I am informed and believe that Mr. Tachner is an attorney licensed in the state of California and registered to practice before the United States Patent and Trademark Office.

8. I am informed and believe that Mr. Tachner uses a docketing system to track actions and their associated due dates and that Mr. Tachner took reasonable steps to ensure that matters were timely entered into the system.

9. Mr. Tachner sent to the Physical Optics Corporation a reporting letter dated September 20, 2002 to report the September 11, 2002 Office Action. In the letter, Mr. Tachner expressly stated "I will prepare a suitable response for filing prior to the due date."

10. The Physical Optics Corporation understood from the reporting letter that an appropriate response to the September 11, 2002 Office Action would be timely filed.

11. The Physical Optics Corporation has never received any communication from Mr. Tachner indicating that the above patent application had been or will become abandoned.

12. The Physical Optics Corporation did not at anytime authorize or instruct Mr. Tachner to allow the above patent application to go abandoned.

13. Accordingly, the Physical Optics Corporation believed that the above patent application was still pending at the United States Patent and Trademark Office.

14. On or about August of 2007, Physical Optics Corporation learned that numerous patent matters that Mr. Tachner was responsible for may have gone abandoned even though we did not receive any communication from Mr. Tachner to indicate that such matters had gone abandoned or would become abandoned.

15. We immediately attempted to contact Mr. Tachner to investigate whether the status reports we had been receiving were accurate and to determine the extent of inaccuracies. Mr. Tachner refused to return our calls or answer our inquiries.

16. Because Mr. Tachner was not responsive to our repeated inquiries, in September of 2007 we undertook a search for new counsel to handle our patent matters, and in October of 2007 retained Sheppard Mullin Richter & Hampton (SMRH) as our intellectual property counsel.

17. In October of 2007, we initiated a transfer of all of our patent files to SMRH.

18. I am informed and believe that SMRH undertook a thorough investigation of our entire docket of intellectual properties and learned that the subject patent application had been abandoned for failure to reply to an Office Action. This was

the first time we learned that this patent application was abandoned as it was not communicated to us by our prior counsel, Mr. Tachner.

19. I am informed and believe that during October and early November of 2007, Daniel N. Yannuzzi, a partner at SMRH, made repeated attempts to contact Mr. Tachner regarding the abandonment. Mr. Tachner has refused and continues to refuse to return Mr. Yannuzzi's telephone calls.

20. I am informed and believe that SMRH worked diligently to attempt to obtain a declaration signed by Mr. Tachner and to prepare a substantive response to the September 11, 2002 Office Action.

21. Accordingly, the entire delay to file a proper reply to the September 11, 2002 Office Action until the filing of a grantable petition 1.137 was unavoidable and unintentional.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Date: Dec. 5, 2007



Gordon Drew
Chief Financial Officer
Physical Optics Corporation